

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Southern District of Texas  
OCT 16 2002  
Michael A. Clark

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In re ENRON CORPORATION  
SECURITIES LITIGATION  
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This Document Relates To:

Civil Action No. H-01-3624  
(Consolidated)

MARK NEWBY, et al., Individually and On  
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

ENRON CORPORATION, et al.,

Defendants.  
-----X

PAMELA M. TITTLE, on behalf of herself and  
a class of persons similarly situated,

Civil Action No. H-01-3913  
(Consolidated)

Plaintiffs,

vs.

ENRON CORPORATION, et al.,

Defendants.  
-----X

THE BANK DEFENDANTS' REPLY TO OBJECTIONS OF  
KOPPER AND F & A PLAINTIFFS TO THE PROPOSED DOCUMENT DEPOSITORY  
ORDER

Defendants Bank of America, Barclays PLC, Canadian Imperial Bank of Commerce, Citigroup Inc., Credit Suisse First Boston Corporation, Deutsche Bank AG, J.P. Morgan Chase & Co., Lehman Brothers Holding, Inc., Merrill Lynch & Co., and Salomon Smith Barney Inc. (collectively, the "Banks") respectfully file this Reply to Objections of Kopper and F & A Plaintiffs to the Proposed Document Depository Order. The Banks make this submission in further support of the Proposed Order establishing a depository (the "Proposed Order") and to respond briefly to two objections to the Proposed Order filed yesterday. These objections (one from Defendant Michael Kopper and one from several plaintiffs represented by the Fleming & Associates law firm in cases that may be consolidated with this one) were filed too late for the Banks to respond in their joinder, also filed yesterday, in the motion for entry of the Proposed Order.

Mr. Kopper's objection is based on the costs associated with imaging and indexing documents produced, and he seeks a modification of the Proposed Order that would exempt all individual defendants, such as himself, from any obligation to image and index their document productions. Mr. Kopper's objection strikes at the core tenet of mutuality that animates the Proposed Order. By the terms of the Proposed Order, all parties will reap the benefits of the imaging and indexing provided by other parties to this litigation. But the price of these benefits is that each party must bear 50% of the costs of imaging and indexing the documents it produces (with the requesting party bearing the other 50%). Ironically, it is the individual defendants, such as Mr. Kopper, who will benefit disproportionately under this arrangement since their document productions (and thus the cost of their participation) will likely be dwarfed by the productions of the institutional defendants such as the Banks, Enron, Arthur Andersen and the law firms. We respectfully submit that it would be unfair to require any party

to take on the additional expense of imaging and indexing its production in the absence of the mutual obligations reflected in the Proposed Order.

We also note that, while Mr. Kopper objects to the costs of imaging and indexing documents, he substantially overstates those costs. As reflected in the Price List attached as Exhibit A to Mr. Kopper's objections, the actual imaging and indexing costs would range from 20 to 25 cents per page (not the 42.5 – 48.5 cents per page that Mr. Kopper suggests).<sup>1</sup> Those costs would, of course, be subject to the cost-sharing provisions of the Proposed Order. We respectfully submit that the benefits of the Proposed Order – which will provide a tool to make these documents reasonably accessible to all parties – far outweigh the associated costs.

The objection of the Fleming & Associates Plaintiffs (the "F&A Plaintiffs") is both ironic and without merit. The F&A Plaintiffs, who are currently resisting the removal of their actions to this Court, seek, by their objection, to mandate *unrestricted* access to the document depository for plaintiffs in state court actions. They argue that such access would result in significant efficiencies and cost savings. Of course, far more efficiencies and cost savings would be attained if these plaintiffs would simply consent to having their actions proceed before this Court. This irony aside, the Proposed Order effectively provides the very cost savings the F&A Plaintiffs purport to seek. Indeed, the F&A Plaintiffs acknowledge that the Proposed Order already provides that any party producing documents in *Newby* or *Titile* may permit non-parties, such as the state court plaintiffs, to have access to that party's documents. It is unlikely that any party producing documents in *Newby* or *Titile* would have any incentive to

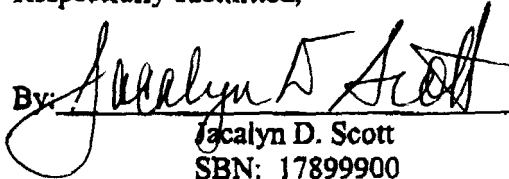
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<sup>1</sup> Mr. Kopper's cost analysis is flawed in that it is premised on the erroneous assumption that each page produced will require coding. Coding is performed at the document level. The cost of coding a multi-page document is the same as the cost of coding a single-page document, which reduces the per-page cost of coding. According to Lex Solutio, the document management firm that will run the depository, the average document is 5 pages long.

refuse to permit a state court plaintiff access to documents in the depository called for by an appropriate and valid subpoena or request for production. Indeed, that would be, by far, the most cost effective way for any party to deal with such a request. Under the F&A Plaintiffs' proposal, however, state court plaintiffs would have unfettered access to documents without even having to draft document requests or issue appropriate process, let alone having to respond to legitimate objections from the *Newby* and *Tittle* producing parties. The F&A Plaintiffs should not be permitted to use the Proposed Order to do an end run around the normal discovery process.

Accordingly, the Banks respectfully urge the Court to enter the Proposed Order.

Respectfully submitted,

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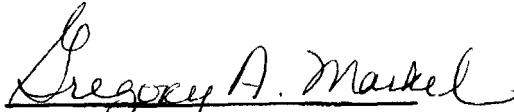
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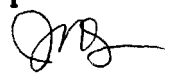
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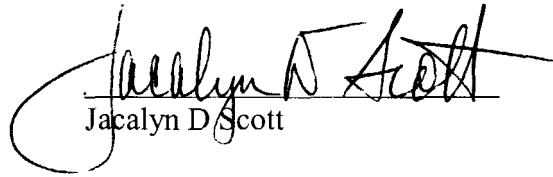
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**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was served on October 16, 2002 pursuant to the Court's orders regarding service in this matter.

***Please see Attached Service List***

  
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The Service List

May be Viewed in

the Office of the Clerk